IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal Against Order No. 133 of 2002

U.P. State Road Transport Corporation
Through its Regional Manager,
Dehradun.

..... Appellant

Versus

1. The Motor Accident Claims Tribunal /
   Addl. District Judge / F.T.C. III,
   Dehradun.
2. Kavinder Shekhar Joshi
   S/o Shri N.P.Joshi
   P.G. College Gopeshwar,
   District Chamoli.

..... Respondents

Mr. Amar Nath Sharma, Advocate for the appellant.
Mr. V.K. Kohli, Senior Advocate assisted by Mr. T. Pandey, Advocate for claimant / respondent No. 2.

Hon'ble Prafulla C.Pant, J.

This appeal, preferred under Section 173 of the Motor Vehicles Act, 1988, is directed against the Award dated 14.03.2002, passed by Motor Accident Claims Tribunal / III Fast Track Court, Dehradun, in M.A.C. Case No. 87 of 1996, whereby the Tribunal has awarded compensation to the tune of Rs. 1,75,000/- to the claimant – respondent.

2) Brief facts of the case are that on 17.03.1993, claimant-respondent Kavinder Shekhar Joshi along with his friend Rajeev Joshi was going from Araghar to Prem Nagar in Dehradun, in motorcycle bearing registration No. U.M.S. 898. Claimant was pillion rider. At about 2:30 P.M., near Gurudwara Singh Sabha, a bus registration No. U.G.Y.

8900, owned appellant, came from behind and dashed at the motorcycle. It is alleged in the claim petition that the driver of the bus belonging to the U.P. State Road Transport Corporation (appellant) was rash and negligent in driving the bus. The claimant received injuries in the accident and his left leg got crushed under the tyre of the bus. He was immediately taken to Doon Hospital for treatment from where he was referred to Post Graduate Institute, Chandigarh. Thereafter, the claimant had to undergo further treatment in Vardhman Trauma Center at Muzaffarnagar. Still the claimant's leg is not set right and the said leg cannot be folded, as such, he has become permanently disabled. In the claim petition it is alleged that the claimant had incurred expenditure of Rs. 80,000/- in his treatment, and the treatment is to continue further. A total sum of Rs. 7,70,000/- was claimed by the claimant, who is aged 21 years at the time of the accident, and was a student of B.Sc.

3) The appellant contested the claim petition before the Tribunal and filed his written statement denying that its driver was rash and negligent in driving the bus. It is pleaded in the written statement that the motorcyclist, while overtaking the bus, got injured in the accident by getting disbalanced. A legal plea was also raised that the owner and the Insurance Company of the motorcycle involved in the accident were not impleaded as party.

4) The Tribunal, after going through the pleadings of the parties, framed following issues, during the trial:

1. *Whether, the claimant aged 21 years got injuries in an accident on 17.03.1993, at about 2:30 P.M., due to the rash and negligent*

driving on the part of the driver of bus registration No.U.G.Y. 8900, if so, its effect?

2. *Whether, the amount claimed is excessive?*

3. *From whom the claimant is entitled to recover the compensation?*

5) After recording the evidence and hearing the parties, the tribunal gave the finding in favour of the claimant, on issue No. 1. On issue Nos. 2 and 3, the Tribunal found that the claimant had incurred expenditure to the tune of Rs. 50,000/- towards the medical treatment. It further found that, since, the claimant has been rendered permanently disabled due to the injuries received in the accident, as such, the claimant was found entitled to a sum of Rs. 1,25,000/- on account of loss in earning, pain and agony suffered by him. Aggrieved by said Award dated 14.03.2002, passed by the Tribunal, this appeal has been preferred.

6) Heard learned counsel for the parties and perused the record.

7) Learned counsel for the appellant argued that permanent disability alleged by the claimant could have been compensated only in terms of Section 163 A of the Motor Vehicles Act, 1988 read with Section 4 of Workmen Compensation Act, 1923 and Schedule IV of the said Act (of 1923). But the learned counsel for the appellant failed to show if from that formulae the amount of compensation can be calculated at less than what has been awarded to the claimant.

8) Next contention made on behalf of the appellant is this that the percentage of permanent disability is not clear from

the record. In reply to this learned counsel for the claimant-respondent argued that the petition of the claimant was moved under Section 166 of the Motor Vehicels Act, 1988 and not under Section 163 A of the said Act. As such, even if the percentage of permanent disability is not clear but permanent disability was proved by the claimant and he would be entitled to the loss he has suffered. In this connection, my attention was drawn to the principle of law laid down in R.D. Hattangadi Vs. pest Control (India) ***Pvt. Ltd., reported in (1995) 1 Supreme Court Cases 551,*** on behalf of the claimants-respondent, in which the Apex court has observed that ***broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant towards : (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened;***

(iv) inconvenence, hardship, discomfort, disappointmnet, frustration and mental stress in life.

The above underlined factors appear to have been considered by the Tribunal is assessing loss at Rs. 1,25,000/- in addition to the expenditure incurred in medical bills to the tune of Rs. 50,000/-, by the claimant. It is proved on the record that the claimant became permanently disabled after the accident and he is unable to fold his left leg. In other words, the claimant has become a handicapped, which has affected future prospects of his earning in life, apart from the obove underlined factors which he would be facing in his entire life to come. The amount of Rs. 1,25,000/- plus Rs. 50,000/-, in the circumstances of the case, cannot be said to be an unreasonable amount awarded by the Tribunal.

9) For the reasons as discussed above, this Court is of the view that the impugned judgment and award, passed by the Tribunal needs no interference on the part of this Court. Accordingly, the appeal is dismissed. The amount, if any, deposited by the appellant in his Court, be sent to the Tribunal concerned, which may be withdrawn by the claimant.

(Prafulla C. Pant, J.)

Dt. August 10, 2006.
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